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8 UNITED STATES DISTRICT COURT
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10 NORTHERN DISTRICT OF CALIFORNIA
11
12 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 MIKLOS DANIEL BRODY,

16 Defendant.
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Case No. 22-CR-00168-WHO

**DEFENDANT BRODY'S TRIAL
MEMORANDUM**

Trial Date: April 10, 2022
Pretrial Conference Date: March 13, 2022
Courtroom: SF Courtroom 2, 17th Floor

Hon. William H. Orrick

1 Mr. Brody respectfully submits this trial brief. Many of the issues identified here are more
2 fully set out in Sullivan's motions in *limine*, or elsewhere in the record.

3 The parties have met and conferred and resolved a number of issues. However, a few
4 issues deserve to be highlighted and warrant consideration.

5 I. KEY LEGAL ISSUE

6 Mr. Brody has been preparing his defense based on the allegations in the Superseding
7 Indictment. As a matter of due process, it is important that the jury be informed of those
8 allegations and that the evidence does not vary from the Superseding Indictment. The parties
9 have raised this issue in the Pretrial Conference Statement. *See, e.g., Jeffers v. United States*, 392
10 F.2d 749, 752-53 (9th Cir. 1968) (reversing convictions due to variance between the indictment
11 and proof at trial).

12 II. KEY EVIDENTIARY ISSUES

13 A number of technical exhibits raise authentication issues under Fed. R. Evid. 901. Many
14 of these exhibits are highlighted in the Joint Preliminary Exhibit List with Objections. The
15 Government has been asked to provide the basis for the authentication and has not done so. A
16 number of the records appear to have modifications which raises questions about the integrity of
17 the evidence. The Devbox records show alternations to the data after the incident. For example,
18 these entries show later alterations, among others:

19 2020-09-15 11:28 ./z_inxadm/.bash_history

20 2020-09-11 23:26 z_inxadm/.ansible/tmp/ansible-tmp-1599891974.57-

21 44588508218607/AnsiballZ_command.py

22 2020-09-11 23:31 z_inxadm/.ansible/tmp/ansible-tmp-1599892277.98-

23 93000711844900/AnsiballZ_command.py

24 2020-09-12 00:06 z_inxadm/.ansible/tmp/ansible-tmp-1599894372.24-

25 241804567308323/AnsiballZ_command.py

26 2020-09-12 00:13 z_inxadm/.ansible/tmp/ansible-tmp-1599894788.08-

27 59039445165348/AnsiballZ_command.py

1 2020-09-12 00:18 z_inxadm/.ansible/tmp/ansible-tmp-1599895110.18-
 2 268799887898792/AnsiballZ_command.py
 3 2020-09-12 00:23 z_inxadm/.ansible/tmp/ansible-tmp-1599895429.49-
 4 75196136876469/AnsiballZ_command.py
 5 2020-09-12 00:29 z_inxadm/.ansible/tmp/ansible-tmp-1599895774.0-
 6 50445047317496/AnsiballZ_command.py
 7 2020-09-12 00:34 z_inxadm/.ansible/tmp/ansible-tmp-1599896085.04-
 8 15848221350184/AnsiballZ_command.py
 9 2020-09-14 00:22 z_inxadm/.ansible/tmp/ansible-tmp-1600068169.39-32019-
 10 148883411997993/AnsiballZ_yum.py
 11 2020-09-16 04:19 z_inxadm/.ansible/tmp/ansible-local-
 12 27089UHWCOI/ansiballz_cache/command-ZIP_DEFLATED
 13 2020-09-16 04:19 z_inxadm/.ansible/tmp/ansible-local-
 14 27089UHWCOI/ansiballz_cache/file-ZIP_DEFLATED
 15 2020-09-16 04:19 z_inxadm/.ansible/tmp/ansible-local-
 16 27089UHWCOI/ansiballz_cache/setup-ZIP_DEFLATED
 17 2020-09-16 04:19 z_inxadm/.ansible/tmp/ansible-local-
 18 27089UHWCOI/ansiballz_cache/stat-ZIP_DEFLATED
 19 2020-09-16 04:22 z_inxadm/.ansible/tmp/ansible-local-
 20 27089UHWCOI/ansiballz_cache/ec2_instance_facts-ZIP_DEFLATED
 21 2020-09-16 04:22 z_inxadm/.ansible/tmp/ansible-local-
 22 27089UHWCOI/ansiballz_cache/ec2_metadata_facts-ZIP_DEFLATED
 23 2020-09-16 04:23 z_inxadm/.ansible/tmp/ansible-tmp-1600255453.39-30356-
 24 234212267895793/AnsiballZ_command.py

25 In this network intrusion case, network records are essential to understand how the
 26 intrusion occurred and who committed it. At the hearing on December 15, 2022, defense counsel
 27 raised the issue about confirming which records were never provided. The Court asked counsel
 28 for First Republic Bank if a custodian may be available to address these issues and counsel
 DEFENDANT'S TRIAL MEMORANDUM

1 confirmed they would. As one means to address this issue, the defense has provided tables which
2 confirm what records are no longer in the possession, custody and control of FRB based on the
3 confirmed responses. This issue is discussed in the motion *in limine*. There may be other ways to
4 address this issue. It is one that will be important to resolve before the trial commences.

5 At the pretrial conference the issue of the sequestration of witnesses under Fed. R. Evid.
6 615 should be addressed including exceptions under the rule.

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8 Dated: March 6, 2023

Respectfully Submitted,

MORGAN, LEWIS & BOCKIUS LLP

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11 By /s/ Mark L. Krotoski
12 Mark L. Krotoski
13 Counsel for Defendant Daniel Brody
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PROOF OF SERVICE

I, Mark L. Krotoski, declare:

I am a citizen of the United States and employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1400 Page Mill Road, Palo Alto, CA 94304. On March 6, 2023, I served a copy of the within document(s):

DEFENDANT DANIEL BRODY'S TRIAL BRIEF

<u>X</u>	via the Court's CM/ECF filing system
_____	by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
_____	by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Palo Alto, California addressed as set forth below."
_____	by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery.
_____	by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Lauren M. Harding
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 6, 2023, at Palo Alto, California.

/s/ Eveline Schid
 Eveline Schmid